Filed 8/20/19 Conservatorship of D.P. CA1/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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| Conservatorship of the Person of D.P. | |
| PUBLIC GUARDIAN FOR CONTRA COSTA COUNTY,<br>Petitioner and Respondent,<br>v.<br>D.P.,<br>Objector and Appellant. | A155806<br>(Contra Costa County Super. Ct. No. P1701052) |

In a proceeding to reestablish a conservatorship over appellant D.P., appellant was found by a jury to be gravely disabled under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5350 et seq.). The trial court entered judgment based on the verdict and reappointed respondent Public Guardian for Contra Costa County (Public Guardian) as conservator of appellant's person for one year commencing July 11, 2018. A timely appeal ensued.

Appellant's sole issue on appeal is the trial court's denial of her one sentence in limine motion to prohibit her compelled testimony on federal and state constitutional equal protection grounds. Appellant contends the trial court erred in permitting the Public Guardian to call appellant as a witness over her objection because it violated her federal and state constitutional equal protection rights to be treated like similarly situated persons (defendants found not guilty by reason of insanity, sexually violent predators,

and mentally disordered offenders), who have the right to refuse to testify at their respective civil commitment proceedings under different statutory schemes. We decline to address appellant's constitutional claim due to the severe inadequacy of the record, and dismiss the appeal as moot as the conservatorship has terminated.

The relevant facts appear in a single page of the clerk's transcript and a single page of the reporter's transcript. Before trial, appellant's counsel filed a written in limine motion asking the court, *in one sentence*, to issue an evidentiary order prohibiting the Public Guardian from compelling appellant to testify, and citing "U.S. Const. Am. V, VI, XIV." At the pretrial hearing, the court rejected appellant's claim that her federal constitutional Fifth Amendment rights applied in this civil case and denied the motion. Appellant's counsel then stated: "I'll just make a very brief record. I know it is unconventional at least for the [appellant] to bring such a motion. However, I do believe that due process, right to trial, equal protection issues should apply in this situation, and I'll just briefly submit. Although I know this context is not criminal in nature, I would argue that by analogy a juvenile dependency proceeding similarly is not criminal in nature and not one that is regarding penalty or punishment. It's a similar context here, I believe. So I'll make that objection with that record and prepare to submit it." The court replied, "That's fine. You've made your record. If you can convince a higher court that's what the rule ought to be, that's up to you. Motion is denied."

Appellant urges us to address the merits of her equal protection argument because the issue is one of constitutional law and of public importance, which is likely to recur, but evade review because of the brief period in which a conservatorship is extant. However, as the record demonstrates, appellant's trial counsel made at best a perfunctory written and oral argument in which he mentioned only the words "equal protection" and made reference to the rights of minors in juvenile delinquency proceedings, without identifying or addressing any case law bearing on the topic. We therefore reject appellant's assertion that her trial counsel's lodging of an "equal protection" objection in the trial court makes this case "an ideal vehicle for an appellate court to weigh in on this recurring issue of public importance." In preserving a claim of error for review, " 'the

objection must be made in such a way as to alert the trial court to the nature of the anticipated evidence and the basis on which exclusion is sought, *and to afford the [opposing party] an opportunity to establish its admissibility.*' [Citation.] What is important is that the objection fairly inform the trial court, as well as the party offering the evidence, of the specific reason or reasons the objecting party believes the evidence should be excluded, *so the party offering the evidence can respond appropriately and the court can make a fully informed ruling."* (*People v. Partida* (2005) 37 Cal.4th 428, 435; italics added.) The record here demonstrates beyond question that the equal protection issue was not litigated and resolved in the trial court although appellant's appellate arguments are based primarily, if not exclusively, on opinions that were issued several months and years before appellant's September 2018 trial. Because the issue was not properly developed for review, we decline to address appellant's constitutional claim at this time. [1]

Accordingly, we dismiss the appeal as moot as the conservatorship has terminated. In light of our determination, we do not address the Public Guardian's arguments that appellant's equal protection claim is meritless and any purported error in compelling appellant's testimony was harmless. Given the procedural posture of this case, we express no opinion regarding appellant's equal protection claim.

**DISPOSITION**

The appeal is dismissed as moot.

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[1] Despite appellant's arguments in her reply brief, the Public Guardian's failure to urge dismissal of the appeal does not require us to address appellant's moot arguments. (See, e.g., *Desny v. Wilder* (1956) 46 Cal.2d 715, 729 [appellant court "is not bound to accept concessions of parties as establishing the law applicable to a case"].)

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Petrou, J.

WE CONCUR:

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Fujisaki, Acting P.J.

_____
Wick, J.*

* Judge of the Superior Court of Sonoma County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.